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Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

DMITRI VALLERVEICH TATARINOV,

Petitioner,

v.

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA, COUNTY OF SAN DIEGO;
OFFICE OF THE CHIEF COUNSEL, DEPT. OF
HOMELAND SECURITY; U.S. ATTORNEY,
SOUTHERN DISTRICT; ICE DETENTION &
REMOVAL UNIT**

Respondent.

07cv2033-L (NLS)

**NOTICE OF MOTION AND
MOTION TO DISMISS FIRST
AMENDED PETITION FOR
WRIT OF HABEAS CORPUS**

NO HEARING REQUIRED

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Edmund G. Brown Jr., Attorney General of the State of California, and Sabrina Y. Lane-
Erwin, Deputy Attorney General, moves this Court, pursuant to Rule 4 of the Rules Governing §
2254 Cases, for dismissal of the First Amended Petition for Writ of Habeas Corpus. Dismissal is
required because Petitioner does not and cannot satisfy the custody requirement for federal habeas
corpus jurisdiction, the First Amended Petition is successive, and he failed to file his First Amended
Petition for Writ of Habeas Corpus within the one-year statute of limitations set forth in 28 U.S.C.

1 § 2244 (d). While Petitioner may still have valid legal options to pursue, this proceeding is not one
2 of them.

3 **CONCLUSION**

4 Wherefore, the First Amended Petition for Writ of Habeas Corpus should be dismissed
5 with prejudice.

6 Dated: December 3, 2007

7 Respectfully submitted,

8 EDMUND G. BROWN JR.
Attorney General of the State of California

9 DANE R. GILLETTE
Chief Assistant Attorney General

10 GARY W. SCHONS
Senior Assistant Attorney General

11 KEVIN VIENNA
Supervising Deputy Attorney General

12 s\ Sabrina Y. Lane-Erwin
13 SABRINA Y. LANE-ERWIN
14 Deputy Attorney General
15 Attorneys for Respondent

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Tatarinov v. Superior Court of the State of California, County of San Diego;
Office of the Chief Counsel, Dept. of Homeland Security; U.S. Attorney, Southern District;
ICE Detention & Removal Unit**

No.: **07cv 2033-L (NLS)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

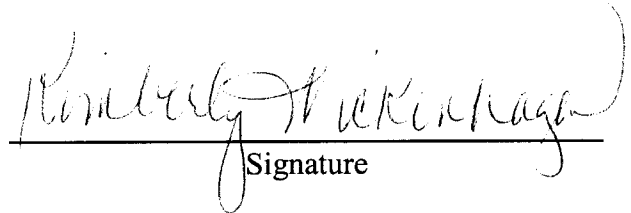
On December 3, 2007, I served the attached **notice of motion and motion to dismiss first amended petition for writ of habeas corpus; memorandum of points and authorities in support of motion to dismiss first amended petition for writ of habeas corpus; notice of lodgment** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West "A" Street, Suite 1100, San Diego, California 92101, addressed as follows:

**Patricia Lynn Jacks
5790 Friars Rd. F8
San Diego CA 92110**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 3, 2007, at San Diego, California.

Kimberly Wickenhagen

Declarant


Signature